

KAUFMAN & KAHN, LLP

MEMO ENDUNSEN

March 3, 2011

BY HAND DELIVERY

Hon. John F. Keenan, U.S.J.
 U.S. District Court, Southern District of New York
 500 Pearl Street
 New York, NY 10007

Re: Samad Brothers, Inc. v. Bokara Rug Co., Inc., et al.
 (S.D.N.Y., Case No. 09 Civ. 5843 (JFK / KNF))

Dear Judge Keenan:

We are counsel to plaintiff Samad Brothers, Inc. ("Samad"). We are enclosing courtesy copies of Samad's moving papers (including the Notice of Motion, Declaration of Mark S. Kaufman dated February 19, 2011, and Memorandum of Law) and its reply papers (including Declaration of Mark S. Kaufman dated March 2, 2011 and Reply Memorandum of Law)¹ in support of Samad's Motion for Sanctions under F.R. Civ. Pr. Rule 37 and for Contempt under Local Rule 83.9.

Samad had understood that this motion would be determined by Magistrate Judge Fox, because it seeks sanctions under Rule 37 for enforcement of discovery rulings, and Your Honor referred the case to Magistrate Judge Fox to determine discovery matters. See Docket No. 15. The "contempt" portion of the motion is merely incidental to the motion for sanctions. Indeed, the ECF clerk directed that the motion be filed as one for sanctions, rather than contempt. Compare Docket No. 97 with No. 102. Similarly, defendants' opposition papers are entitled "...in Opposition to Plaintiff's Motion for Sanctions". Consistent with this understanding, Samad sent courtesy copies of the moving papers to Magistrate Judge Fox. Magistrate Judge Fox is intimately familiar with correspondence from both parties regarding the matters set forth herein, and need not, for example, re-read all such correspondence or review entire transcripts of conferences over which he presided.

Magistrate Judge Fox had already indicated during the conference of November 16, 2010, that Rule 37 sanctions would be available if Samad could demonstrate that defendants had failed to produce all responsive documents after defendants had certified that production was complete. See Kaufman 3/2/11 Decl. ¶¶ 15-16. Samad relied on such statements, and understood them to mean that Magistrate Judge Fox had already approved Samad's making a motion for sanctions under the facts set forth herein: defendants admittedly have failed to produce all of the copyright registration photos in their possession and refused to comply with the court's directives to produce the same.

¹ Page 13 to the Reply Declaration, as filed with ECF, inadvertently had text in the wrong font, and is corrected on the enclosed hard copy without any other changes.

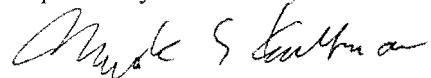
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However, having received defendants' opposition papers, Samad has become aware of magistrate judges' limited authority to preside over contempt proceedings. Thus, Samad inadvertently did not make a request to Your Honor for a pre-motion conference, and was compelled to attach as exhibits to the reply declaration some of the letters and attachments already considered by Magistrate Judge Fox. Samad respectfully requests that Your Honor either (a) allow Samad to withdraw the contempt portion of its motion in order to refer the motion, solely for sanctions, to be determined by Magistrate Judge Fox, or (b) hold a pre-motion conference, if Your Honor deems the same advisable.

Thank you for your consideration of this matter.

Respectfully submitted,



Mark S. Kaufman

Encls.

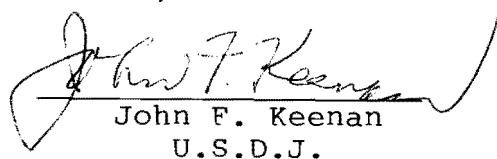
cc. (by hand, w/ reply papers, only):

Hon. Kevin N. Fox, U.S.M.J.
Jura C. Zibas, Esq.

The requirement of a pre-motion conference is waived. This Court, and not Magistrate Judge Fox, will determine both motions.

SO ORDERED.

Dated: New York, N.Y.
March 14, 2011



John F. Keenan
U.S.D.J.